

VZCZCXRO6616

RR RUEHCD RUEHGA RUEHGD RUEHHA RUEHHO RUEHMC RUEHMT RUEHNG RUEHNL
RUEHQU RUEHRD RUEHRS RUEHTM RUEHVC
DE RUEHME #0723/01 0692324
ZNR UUUUU ZZH
R 102324Z MAR 09 ZDS
FM AMEMBASSY MEXICO
TO RUEHC/SECSTATE WASHDC 5586
RUEHC/DEPT OF LABOR WASHINGTON DC
RHMFIUU/DEPT OF HOMELAND SECURITY WASHINGTON DC
INFO RUCNCAN/ALL CANADIAN POSTS COLLECTIVE
RUEHXC/ALL US CONSULATES IN MEXICO COLLECTIVE
RHMFISS/CDR USSOUTHCOM MIAMI FL
RUEHRC/DEPT OF AGRICULTURE WASHINGTON DC
RUEHGT/AMEMBASSY GUATEMALA

UNCLAS SECTION 01 OF 03 MEXICO 000723

C O R R E C T E D C O P Y (ADDED GUATEMALA AS INFO)

SIPDIS

DEPT FOR DRL/AWH AND ILSCR, CA/VO, WHA/MEX AND USDOL FOR
ILAB AND ETA

E.O. 12958: N/A

TAGS: [ELAB](#) [ECON](#) [CVIS](#) [EAGR](#) [PGOV](#) [SOCI](#) [PINR](#) [MX](#)

SUBJECT: UNTIED FARM WORKERS CONTINUES TO SUPPORT H-2 VISA
FARM LABORS FROM COLIMA

REF: 08 MEXICO 3493

MEXICO 00000723 001.2 OF 003

11. SUMMARY: In 2008 a large group of laborers were recruited from the Mexican pacific coastal state of Colima to do farm work in California and Iowa. According to the United Farm Workers (UFW) union, the Colima laborers entered the US with the hope of working there legally after complying with all of the requirements needed to receive H-2A visas. Unfortunately, upon their arrival in the US the UFW says that their employers failed to abide by the terms of their contractual agreement with the workers. As a result the UFW contracted the services of two labor rights advocacy firms to file a class action suit on behalf of the Colima laborers. Ultimately the law firms hope to have about 100 laborers take part in the suit. Mission Mexico,s Labor Counselor recently traveled to Colima to meet with representatives of the law firms and learn more about the basis for their legal action on behalf of the aggrieved farm laborers. The law firm representatives have started working with the GOM,s Foreign Ministry on this matter and they expressed their gratitude that the USG was also interested in seeing justice done for the Colima laborers. For the law firm representatives this case was mostly a matter of defending their clients. For the UFW this case holds greater significance as an indication of some of the problems with the H-2A visa program. END SUMMARY.

COLIMA WORKERS EARN LESS THAN PROMISED

12. In July 2008 roughly 200 agricultural laborers were recruited from the Mexican pacific coastal state of Colima to work on farms in California and Iowa (Reftel). The workers were recruited by a relatively inexperienced labor contractor who, allegedly with the consent of various US employers, promised them the full range of housing, meals and salary benefits as stipulated under applicable H-2 visa provisions. For the laborers the best thing they thought they had been promised was a guarantee of earning USD 100 per day and a 40 hour workweek for a period of at least six months. In order to obtain the jobs promised by the recruiter the workers were all required to pay USD 600 to cover visa processing and travel costs. Unfortunately for the Colima workers, it appears that none of the promises made to them were kept.

13. Upon arrival in the US the laborers were reportedly placed in substandard housing, provided meals that consisted of little more than beans and were rarely, if ever, given the

40 hours of work per week they had been promised. In some cases the laborers were never offered the full-time employment they had been promised; in other instances they were reportedly not paid in full for the work they actually did. With the help of the United Farm Workers (UFW) union the workers were organized into a group that would ultimately be represented by the California Rural Legal Assistance Foundation (CRLA) and the Texas Rio Grande Legal Aid, Inc. (TRLA). These two labor rights advocacy firms have filed a class suit against the recruiter and the US employers on behalf of the Colima workers to obtain the promised wages and benefits. The case was filed in the California Eastern District Court on August 20, 2008. The defendants listed in the case are: SGLC, INC., Cesar Hugo Ibarra Ceja, Abraham Jimenez Bueno, Jaime Lopez Ramos, Salvador Gonzalez, Julian Gonzalez and Salvador Gonzalez dba Salvador Gonzalez Labor Contractor. SGLC, Inc. is a firm that largely operates in the areas of Galt and Clarksburg, California. The H-2 petition number in this case is: WAC 0818-251501-012.

14. The UFW, CRLA and TRLA all attempted to enlist the assistance of the GOM and the state government of Colima to help the workers obtain some form of redress for their grievances. For the most part these efforts have been unsuccessful with respect to the state authorities in Colima but, this past January, the GOM's Foreign Ministry began working with CRLA and TRLA to look into the workers complaints. Unfortunately for the workers the support of the GOM, while welcome, did not come until all of them had ultimately returned home to Mexico. In, the end workers were forced to pay their own way home, having earned less than the net cost of their original outlay for coming to work in the US. Moreover, upon their return to Mexico many were allegedly threaten by agents of the original recruiter as well as by Colima state government authorities to withdraw from the class action suit or be forever banned from the possibility of obtaining legal employment in the US.

THE WORKERS AND THE LAWYERS

MEXICO 00000723 002.2 OF 003

15. When the CRLA and TRLA originally took up the case of the Colima laborers their client group consisted of some 35 workers. That group has now grown to just over 50 workers and the two farm labor advocates hope to have a group of approximately 100 by the time the case is ready for trial. In most such cases the workers who apply to do farm labor in the US are nearly almost always men but in this case, perhaps because the laborers were able to legally enter the US on H-2A visas, some 15 percent of them were women. As noted above the laborers were recruited to work in California and Iowa. While the overwhelming majority of the workers were sent to California the criteria used for determining which workers went where seemed to be more a function of when they signed up to go. There does not appear to be any significant difference in the treatment either group received; which is to say neither group received the wages or benefits they were promised.

16. In connection with a mass meeting with aggrieved workers in Colima organized for the CRLA and TRLA by the Foreign Ministry, Mission Mexico Labor Counselor met with the two head labor lawyers involved to get their assessment on the status of the case. The two farm labor advocates were guardedly optimistic about the prospects for this particular suit but indicated that what happened to the Colima workers was not unique. Such things as failure to pay the minimum wage, breach of contract, violations of labor and housing laws and failure to comply with the Fair Labor Standards Act were problems the labor advocates indicated they had often seen before. In representing the workers the labor advocates repeatedly asked Labor Counselor for advice on what could be done to prevent future abuse by unscrupulous recruiters and employers.

17. The most common problem the labor advocates described was a threat that workers who stood up for their legal rights would be falsely accused of failing to abide by the terms of their H-2A visa and consequently banned from ever again

working legally in the US. This, the labor advocates said, was exactly what was happening in Colima and while they did not seem overly concerned about being able to help this particular group of workers they were clearly searching for some way they could advise other workers to take preventive action to ensure their fair access to the H-2A visa program in the future. When asked why this particular case might be easier to champion than some others the labor advocates indicated that the amounts involved were not that large. If everything went their way and they won everything they were asking for the most any aggrieved worker would get would be around USD 10,000. This is might be a lot for the workers but not for most large Argo-businesses. The CLRA representative did not rule out the possibility that an out of court settlement could be reached in this case.

UFW WANTS TO PROTECT WORKER ACCESS TO H-2A PROGRAM

¶8. Over the course of a series of phone calls and emails with a UFW official prior to traveling to Colima Mission Labor Counselor got the impression that union did not specifically blame the recruiter for what happened to the Colima workers. However, the official opined that the situation with the Colima workers might never have happened if the H-2A visa program had more effective oversight. Such oversight, he averred, might have prevented someone like the inexperienced recruiter from ever being authorized to contract foreign laborers in the first place.

¶9. Of equal and perhaps greater concern to the UFW than the amount of oversight being given to the H-2A program was the fact that there appeared to be a concerted effort to prevent the Colima workers from pursuing their grievances via the US legal system. According to the UFW representatives of the Colima state authorities have repeatedly threatened the complaining workers to try and get them to withdraw from the class action suit. The workers are being told that they will be blacklisted and prevented from ever being able to receive an H-2A visa unless they immediately halt their involvement in any legal action against the recruiter or the US employers. The UFW had hoped that the involvement in this case of the GOM's Foreign Ministry would send a clear message to desist to whoever was threatening the workers in Colima. Unfortunately, during the recent visit to Colima, Mission Labor Counselor saw no indication that the state authorities had been approached or in any way asked to help resolve this case.

COMMENT

MEXICO 00000723 003.2 OF 003

¶10. In Mission Mexico Labor Counselor's discussions with the UFW the union steadfastly expressed its firm support for the H-2 visa program but said that as currently implemented it was causing problems on both sides of the border with the situation in Colima being a good example. The two farm labor advocacy firms focused more on the problems of their clients in this particular case than they did on the broader functioning of the H-2 program but they clearly were aware of how the threat of denying access to the program was a reoccurring dilemma for agricultural workers from Mexico. Although it may appear that the recruiter and whatever US businesses it represented were the one completely at fault this case may not be that simple. Anecdotal information suggests the recruiter may not have done a particularly good job of matching up workers with businesses that actually needed agricultural laborers. This entire matter seems to have been handled in a fashion where the recruiter focused on getting the workers to the US legally and just assumed that potential employers would be beating down their door to get the laborers. Once that did not happen no one really knew what to do with the workers the recruiter had on hand. From talking to the UFW, the CLRA, the TRLA and listening to the workers involved in this case there appears to be a clear need for H-2 visas and a strong desire by the unions, the workers and even the GOM to find a way to make it work.

¶11. This message was cleared with AmConsul Guadalajara.

Visit Mexico City's Classified Web Site at
<http://www.state.sgov.gov/p/wha/mexicocity> and the North American
Partnership Blog at <http://www.intelink.gov/communities/state/nap> /
BASSETT